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Subject: RE: Post Petition Liabilities in Chapter 13 cases

In response to your question about differing procedures between two Insolvency offices with respect to the treatment of post-petition liabilities in Chapter 13 cases:

IRM 5.9.10.9(6) states:

(6) **Postpetition Levy Action.** In a Chapter 13 case, if the plan does not provide for payment of a postpetition tax liability, generally the postpetition liabilities can be collected (including by use of levy action) from any asset not dedicated to the plan. In addition to monies required to fund the plan, the debtor is entitled to receive the exempt amounts from a wage levy accorded to taxpayers under the IRC. Further, Insolvency must follow local rules or standing orders impacting this position.

a. If wages and future earnings of the debtor are designated to fund the plan, and the IRS serves a wage levy against the debtor for postpetition debts, *the levy must state it reaches only those wages which exceed the payments to the trustee.*

b. IRM 5.9.3.7, *Collection Due Process (CDP) Cases*, provides information on debtors' rights, including pre-levy notice when levy action is being considered for postpetition tax debts.

Caution: The automatic stay may prohibit some actions to collect postpetition tax liabilities after confirmation of the Chapter 13 plan. However, the filing of notices of federal tax liens and setting off postpetition overpayments may not be violations of the automatic stay. Counsel should be consulted for legal advice, because judicial districts differ as to which assets (if any) are protected property of the estate after confirmation. IRM 5.9.4.1 and IRM 5.9.10.8.1 give additional information on property of the estate.

Given the above and the materials in the GL-2 training manual at pages 10-13 and 10-14, it appears that the local rules are the controlling factor here when reviewing what levels of the levy process may be used when pursuing post-petition assets in a Chapter 13 case. Therefore, any advice regarding the procedures used in Florida should be issued by or coordinated with the Counsel office for that area.

The use of these levy procedures is only available if the post-petition liability is not covered by the plan. If an administrative claim was filed and the plan covers the liability, then alternative collection approaches available are listed in IRM 5.9.10.9(5). If the levy procedures are applicable, however, Insolvency must be careful not to pursue assets that are being used to fund the plan as this may violate the automatic stay. Attention to this should especially be paid if Insolvency is intending to levy the debtor's wages and the plan does not specify the amount of wages to be paid to the trustee.

Please let me know if you have additional questions on this matter. Thank you.